IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO.41 OF 1999

1. Aruja Devi Nilkintrao Gaekwad,
major, married, and her husband

2. Nilkintrao Ajitsingh Gaekwad,

both resident of
Ganesh Bhuwan - Lal Baugh Road,
Pratap Nagar, Opp. Vidya Kunj
School, Baroda- 390 004;

3. Lavina Raghunatharao Dessai,
major, married, c/o Pralhad
Dessai, resident of Prabhu
Waddo, Calangute
Bardez-Goa;

4. Rajan Dessai,
major, married and
his wife

5. Nita Rajan Dessai,
major, married, both
resident of Damodar Housing
Society. Bldg. no.3,Flat no.1,
Aquem Alto, Margao,Goa;

6. Nitish Raghunathrao Dessai,
Damodar Housing Society,
Bldg No.3/1
Aquem - Alto, Margao,Goa ... APPELLANTS

VERSUS

1. Sanjita Udaisingh Rane
Sardessai, major, married,
and her husband

2. Udaysingh Rane Sardessai,
major, married, both resident
of S-3, Rajvihar,
Near Power House, Aquem,
Alto Margao, Goa ... RESPONDENTS.

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Mr. M.S. Usgaonkar, Sr. Advocate, with Mr. Sudesh Usgaonkar, Advocate, for the Appellants.

Mr. C. Mascarenhas, Advocate for the Respondents Nos.1 and 2.

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CORAM : F.I. REBELLO,J.

DATED : JULY 11, 2003.

ORAL JUDGMENT

Appellants Nos. 1 and 3 are the daughters of late Vijaymala. Appellant No.2 is the husband of Appellant No.1 Aruna. On the death of Vijaymala, inventory proceedings had been initiated. In those proceedings on behalf of the head of the family, an application was moved. Reply was filed by the head of family on application dated 1-4-1991 which was filed by Respondent No.1 Sanjita. In that certain documents were relied upon which included agreements dated 28-5-1987, the lease deed whereof was filed, as also some receipts. After the said agreements, Appellants Nos.1 and 3 relinquished their rights in the estate of late Vijaymala by deed of relinquishment dated 1-6-1987. In respect of the agreement dated 28-5-1987 there was subsequently a sale deed entered into which is dated 15th February, 1988.

2. Before the Court an issue was raised that as the Appellants Nos. 1 and 3 had relinquished their rights in the estate of Vijaymala they would have no right also in respect of the subject-matter covered by the two agreements

and sale deed. The learned Court found favour with the said contention and by its Order dated 5th July 1999 held that Aruna and Lavina could not be parties as they had totally renounced their rights. It may be mentioned that the agreement and sale deed were also in respect of assets left behind by the late Vijaymala.

3. At the hearing of this Appeal, on behalf of the Appellants, it is contended that the learned Trial Court has not at all addressed itself to the issue of agreement dated 28-5-1987 which was even prior to the deed of renouncement dated 1-6-1987. It is submitted that insofar as the early agreement is concerned, the Appellants would continue to enjoy their rights would be in operation irrespective of the subject deed of relinquishment. On behalf of the contesting Respondents, their learned Counsel contends that the said agreement is a fabricated or bogus document or got up and in these circumstances could not have been relied upon by the Court. The sale deed being subsequent to the deed of relinquishment therefore could not be acted upon and consequently the Appellants herein rightly would not be parties to the inventory proceedings.

4. Having heard the learned Counsel, in my opinion, the Order dated 5th July, 1999 will have to be set aside. Admittedly, before the Trial Court, the agreement dated 28-5-1987 was on record. If the contention of the learned Counsel for the contesting Respondents is to be accepted that the said agreement is fabricated or got up or procured the same issue had to be answered by the Court. That has not been done. There is therefore error of law committed by the Trial Court and in that light of the matter, the Order will have to be aside. The Trial Court will have to give specific finding on the said agreement.

5. In the light of that, the following Order:

The impugned Order dated 5th July, 1999 is set aside. The matter is remanded to the Trial Court for re-consideration of the issue and after hearing the parties to pass fresh orders according to law.

Appeal is allowed accordingly with no order as to costs.

**F.I. REBELLO,J.>**